

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CHOE C. HUYETT</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 141,134
<b>FRANKLIN COUNTY, KANSAS</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRI-STATE INSURANCE CO.,</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

Claimant appealed the Award entered by Administrative Law Judge Alvin E. Witwer dated December 4, 1996. The Appeals Board heard oral argument on May 28, 1997. Bryce A. Abbott has been appointed Member Pro Tem to serve in place of Board Member Gary M. Peterson who recused himself from this proceeding.

**APPEARANCES**

Claimant appeared by her attorney, Robert E. Tilton of Topeka, Kansas. Respondent and its insurance carrier appeared by their attorney, James B. Biggs of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Thomas D. Haney of Topeka, Kansas. There were no other appearances.

**RECORD**

The Appeals Board considered the record listed in the Award.

**STIPULATIONS**

The Appeals Board adopted the stipulations listed in the Award.

**ISSUES**

The claimant requested the Appeals Board review the following issues:

- (1) The nature and extent of the disability claimant sustained as a result of her personal injury by accident on December 6, 1988, and the appropriate compensation due the claimant as a result of her accident.
- (2) Whether claimant should be allowed treatment for her emotional injury.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, considering the briefs, and hearing arguments of the parties, the Appeals Board finds as follows:

The claimant, Choe C. Huyett, sustained injuries to her lumbar spine and her cervical spine areas on December 6, 1988, while lifting a bucket of water to a sink which was approximately waist high. She worked as a maintenance worker for respondent, a position she had held since 1985. Following that injury, the claimant continued to work for the respondent for approximately two weeks when her condition became such that she could no longer perform the duties of a custodian.

The claimant came under the care of R. Michael Mendlick, M.D., an orthopaedic surgeon, and low back surgery was performed by Dr. Mendlick on March 14, 1989. The claimant noted improvement for a short period of time, but then developed additional and numerous complaints relative to her cervical and lumbar spine. The medical testimony in this case indicates that the lumbar complaints may have stemmed from the formation of scar tissue; regardless, following additional testing, no additional surgery has been recommended. The claimant did not return to any type of gainful employment after late-December 1988 although she subsequently applied for and received social security disability benefits. The record also reflects that the claimant had sustained a prior low back injury in 1985, and that surgery had been recommended as a result. The claimant declined back surgery as a result of the 1985 injury.

At the time of the regular hearing, claimant was almost 50 years of age. She is of Korean descent and possesses a sixth or seventh grade education. The claimant has taken some adult education courses, primarily to become more fluent with the English language.

The claimant has been evaluated by a number of physicians, including John J. Wertzberger, M.D., a board-certified orthopaedic surgeon, who examined the claimant on June 11, 1992, and October 12, 1994. At the time of the first evaluation, it was Dr. Wertzberger's opinion that the claimant possessed a 14 percent permanent impairment of function relative to her cervical spine and a 16 percent permanent impairment of function concerning her lumbar spine complaints. These functional ratings combined to a 28 percent

permanent impairment of function to the body as a whole. Following the October 12, 1994, evaluation, Dr. Wertzberger was of the opinion that the claimant had an 8 percent permanent impairment of function to the cervical spine and a 16 percent permanent impairment of function to the lumbar spine which combined to 23 percent permanent impairment of function to the body as a whole. Dr. Wertzberger also noted that the claimant suffered from depression. In his opinion she was not physically able to return to her previous employment as a custodian for the respondent.

In the absence of an agreement relative to the claimant's functional impairment, the Administrative Law Judge appointed David J. Clymer, M.D., a board-certified orthopaedic surgeon, to evaluate the claimant's condition. Dr. Clymer conducted his examination on June 29, 1995. The Administrative Law Judge properly considered this court-ordered IME report in reaching his decision. Dr. Clymer was of the opinion that the claimant possessed a 2 percent permanent impairment of function to the cervical spine and a 14 percent permanent impairment of function due to the lumbar spine, which combined to a 16 percent permanent impairment of function to the body as a whole.

The claimant was also evaluated by Sharon L. McKinney, D.O., a specialist in physical medicine and rehabilitation. Dr. McKinney diagnosed fibromyalgia. The claimant self-referred to Dr. Gilbert R. Parks, a psychiatrist, and Dr. Parks treated the claimant from December 5, 1991, until July 7, 1992. He also saw the claimant on July 21, 1995. Dr. Parks testified in this matter on behalf of the claimant. It was his opinion that the claimant possessed a 20 percent impairment of function to the body as a whole as a result of a psychiatric disability.

The respondent/insurance carrier had the claimant evaluated on November 6, 1995, by Warren G. Phillips, M.D., a board-certified psychiatrist. Dr. Phillips testified that the claimant had sustained no psychiatric disability as a result of her accidental injury on December 6, 1988. Dr. Phillips did note, however, the presence of some of the elements of depression, but he attributed those to certain circumstances in the claimant's personal life, particularly those involved with her family, including her husband and mother. Dr. Phillips also noted certain cultural differences that may have accounted for the test findings indicative of depression.

The Board notes an absence of evidence of depression-like behavior in the record before the subject work-related accident. The Board finds, under the facts of this case, the testimony of Dr. Parks more persuasive than the testimony of Dr. Phillips. Based upon the entire record, the Appeals Board finds that the claimant has met her burden of proof in establishing a compensable psychiatric injury and that she is entitled to medical treatment for same. The respondent and its insurance carrier are ordered to provide the claimant with a list of three qualified health care providers and the claimant is directed to pick one of the three to provide her care and treatment. The respondent and insurance carrier are directed to pay for the medical treatment until the claimant is released or until further order of the Administrative Law Judge.

The claimant was evaluated by two vocational consultants. These vocational consultants were Michael J. Dreiling and Karen Crist Terrill. Based on a review of the entire record, the Appeals Board finds that the compensation due the claimant was incorrectly computed. The claimant has suffered a 75 percent loss of access to the open labor market and a 13 percent wage loss which, when averaged, calculate to a 44 percent work disability. The claimant is, therefore, entitled to two weeks of permanent partial disability at the rate of \$26.96 per week for a 16 percent permanent partial disability to the body as a whole for the two-week period she worked following her accidental injury of December 6, 1988, or \$53.92. Additionally, the claimant is entitled to 47 weeks of temporary total disability benefits at the rate of \$168.51 per week, or \$7,919.97, less any amounts previously paid, and 366 weeks of permanent partial disability benefits based upon a 44 percent work disability at the weekly rate of \$74.14, or \$27,135.24. The total award is, therefore, \$35,109.13.

The Board finds no evidence of a preexisting mental impairment. The Board further finds that all of the functional limitations appear to be related to the claimant's physical injuries and not to the mental injury. Therefore, no additional compensation is awarded for mental impairment or disability.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award dated December 4, 1996, entered by Administrative Law Judge Alvin E. Witwer should be, and hereby is, modified in accordance with the findings herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of October 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert E. Tilton, Topeka, KS  
James B. Biggs, Topeka, KS  
Thomas D. Haney, Topeka, KS  
Julie A. N. Sample, Administrative Law Judge  
Philip S. Harness, Director